



2008-093

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

June 11, 2008

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

Honorable William E. Shinn, Jr.  
County Attorney  
Harris, Caddell & Shanks  
Post Office Box 2688  
Decatur, Alabama 35602-2688

Counties - Municipalities -  
Contracts - Competitive Bid Law -  
Solid Waste Disposal - Morgan  
County

Solid waste disposal contracts  
between Morgan County and  
municipalities are not required to be  
let by competitive bidding.

Dear Mr. Shinn:

This opinion of the Attorney General is issued in response to your request on behalf of the Morgan County Commission.

QUESTION

Are solid waste disposal contracts between  
Morgan County and municipalities subject to the  
Competitive Bid Law?

FACTS AND ANALYSIS

You ask this Office to clarify our line of opinions addressing the applicability of the Competitive Bid Law to contracts between governmental entities. Most of those opinions merely restate the general principle and cite to earlier opinions without stating the basis of the decisions.

The Competitive Bid Law, codified at section 41-16-50, *et seq.*, of the Code of Alabama, applies generally to contracts in an amount of at

Honorable William E. Shinn, Jr.

Page 2

least \$7500 for labor, services, work, or for the purchase or lease of materials, equipment, supplies, or other personal property. ALA. CODE § 41-16-50 to § 41-16-63 (2000 & Supp. 2007). This Office has consistently stated that contracts between public entities are not required to be competitively bid:

- Honorable Jack Fendley, Mayor, Town of Pennington, dated January 19, 2005, A.G. No. 2005-046;
- Timothy D. Littrell, Attorney, Town of Courtland, dated June 24, 1998, A.G. No. 98-00168;
- Honorable Guy F. Gunter, III, Attorney, City of Opelika, dated January 25, 1996, A.G. No. 96-00107;
- Honorable Tandy D. Little, Jr., Administrator, Alabama Alcoholic Beverage Control Board, dated January 4, 1991, A.G. No. 91-00131;
- Honorable William C. Gullahorn, Jr., City Attorney, dated February 5, 1982, A.G. No. 82-00174;
- Honorable R. J. Ozley, Mayor, City of Columbiana, dated September 13, 1978;
- Honorable Maury Friedlander, Attorney, Mobile County Commission, dated June 4, 1969;
- Honorable Lloyd Tippet, Mayor, City of Tallassee, dated March 15, 1968.

The rationale underlying these opinions was explained as early as 1968 in the *Tippet* opinion as follows:

Although Act No. 2217, as amended, *supra*, does not specifically exempt from its operation agreements by counties to repair or maintain municipal streets, I am of the opinion that the Legislature did not intend to require such contracts to be entered into on a competitive bid basis for the following reasons:

1. Cooperation between local governments within the State should be encouraged and promoted.

2. County officials in agreeing to maintain and repair municipal streets are not motivated by a desire for monetary gain.

3. The purchases by counties of all equipment and supplies costing \$500.00 or more is controlled by Act No. 217, as amended, supra.

The opinion expressed herein is strengthened by the following general statement of law found in McQuillin, Municipal Corporations, Third Edition, Section 29.29:

"The provisions of statutes, charters and ordinances requiring competitive bidding in the letting of municipal contracts are for the purpose of inviting competition, to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable, and they are enacted for the benefit of property holders and taxpayers, and not for the benefit or enrichment of bidders, and should be so construed and administered so as to accomplish such purpose fairly and reasonably with sole reference to the public interest. These provisions are strictly construed by the courts, and will not be extended beyond their reasonable purport. Such provisions must be read in the light of the reason for their enactment, lest they be applied where they were

not intended to operate and thus deny municipalities authority to deal with problems in a sensible, practical way.”

*Id.* at 2-3.

Governmental entities at the local and state level have routinely relied on these opinions to enter into contracts with one another without competitive bidding. Although the Competitive Bid Law has been amended numerous times over the years, the Legislature has never acted to countermand this longstanding interpretation by this Office that such contracts are authorized. An established administrative construction that has been followed for a long time is presumed correct. *Glencoe Paving Co. v. Graves*, 266 Ala. 154, 94 So. 2d 872 (1957); *see also, State v. Consumers Bagging Co., Inc.*, 48 Ala. App. 95, 262 So. 2d 297 (Ala. Civ. App. 1971) (stating that when a longstanding administrative interpretation has stood unchallenged for a lengthy period of time, that fact is to be given favorable consideration by the courts).

In addition, in matters of statutory interpretation, it is presumed that the Legislature, in enacting new legislation, knows the existing law. *Ex parte Fontaine Trailer Co.*, 854 So. 2d 71 (Ala. 2003) (quoting *Blue Cross & Blue Shield of Ala., Inc. v. Nielsen*, 714 So. 2d 293, 297 (Ala.1998)). The latter rule of statutory construction applies to opinions of this Office. Opinions to Honorable Nancy Worley, Secretary of State, dated March 21, 2006, A.G. No. 2006-071 (Open Meetings Act did not change the interpretation under the Sunshine Law that physical presence at a meeting is required for there to be a quorum); Honorable Tommy Ed Roberts, Alabama State Senator, dated October 7, 1999, A.G. No. 2000-004 (codification of criminal investigations exception to Open Records Law did not change the interpretation that the front of the Alabama Uniform Incident/Offense Report is subject to disclosure). After a complete review, the above line of opinions is reaffirmed.

Honorable William E. Shinn, Jr.  
Page 5

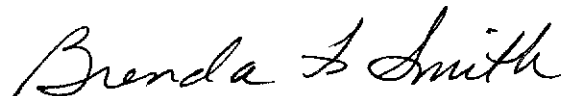
CONCLUSION

Solid waste disposal contracts between Morgan County Commission and municipalities are not required to be let by competitive bidding.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING  
Attorney General  
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

TK/GWB

637860/120240